

U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

IN THE MATTER OF:

The Former Homer A. Doerr & Sons Plating  
Company  
2408 North Leffingwell Avenue St. Louis,  
Missouri  
MOD 006273635

Sensient Colors LLC, Respondent

Pursuant to Sections 104, 106, 107, and 122 of  
the Comprehensive Environmental Response,  
Compensation, and Liability Act,  
42 U.S.C. §§ 9604, 9606, 9607, and 9622;  
and Section 3008 of the Solid Waste Disposal  
Act, commonly referred to as the Resource  
Conservation and Recovery Act, 42 U.S.C. §  
6928.

EPA Docket Nos.  
CERCLA-07-2017-0163  
RCRA-07-2017-0164

**SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR  
REMOVAL ACTION BY  
BONA FIDE PROSPECTIVE PURCHASER**

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## I. INTRODUCTION

1. This Settlement Agreement and Order on Consent for Removal Action by a Bona Fide Prospective Purchaser (Settlement Agreement) is voluntarily entered into by and between the United States on behalf of the Environmental Protection Agency (EPA) and Sensient Colors LLC (Purchaser) (collectively, the Parties ) pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 - 9675; and the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments (RCRA) 42 U.S.C. §§ 6901 – 6992k. Under this Settlement Agreement, Purchaser agrees to perform a removal action at or in connection with the property located at 2408 North Leffingwell Avenue, St. Louis, Missouri (the “Site”).

## II. JURISDICTION AND GENERAL PROVISIONS

2. This Settlement Agreement is issued pursuant to the authority vested in the President of the United States by Sections 104, 106, 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9606, 9607, and 9622, and delegated to the Administrator of EPA by Executive Order No. 12580, January 23, 1987, 52 *Federal Register* 2923, and further delegated to the undersigned Regional official. This Settlement Agreement is also issued under the authority vested in the Administrator of the EPA by RCRA, 42 U.S.C. §§ 6901 – 6992k, and redelegated to the undersigned Regional Official. This Settlement Agreement is also entered into pursuant to the authority of the Attorney General to compromise and settle claims of the United States.

3. The Parties agree that the United States District Court for the Eastern District of Missouri will have jurisdiction pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), for any enforcement action brought with respect to this Settlement Agreement.

4. EPA has notified the State of Missouri (the State) of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

5. Purchaser represents that it is a bona fide prospective purchaser (BFPP) as defined by Section 101(40) of CERCLA, 42 U.S.C. § 9601(40), that it has and will continue to comply with Section 101(40) during its ownership of the Site, and thus qualifies for the protection from liability under CERCLA set forth in Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to the Site. In view, however, of the complex nature and significant extent of the Work to be performed in connection with the removal action at the Site, and the risk of claims under CERCLA being asserted against Purchaser notwithstanding Section 107(r)(1) as a consequence of Purchaser’s activities at the Site pursuant to this Settlement Agreement, one of the purposes of this Settlement Agreement is to resolve, subject to the reservations and limitations contained in Section XV (Reservations of Rights by United States), any potential liability of Purchaser under CERCLA for the Existing Contamination as defined by Paragraph 11 below.

6. The resolution of this potential liability, in exchange for Purchaser’s performance of the Work is in the public interest.

7. EPA and Purchaser recognize that this Settlement Agreement has been negotiated in good faith. Purchaser agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

### III. PARTIES BOUND

8. This Settlement Agreement applies to and is binding upon EPA and upon Purchaser and its successors, and assigns. Any change in ownership or corporate status of Purchaser including, but not limited to, any transfer of assets or real or personal property shall not alter Purchaser's responsibilities under this Settlement Agreement.

9. Each undersigned representative of Purchaser certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind Purchaser to this Settlement Agreement.

10. Purchaser shall provide a copy of this Settlement Agreement to each contractor hired to perform the Work required by this Settlement Agreement and to each person representing Purchaser with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Settlement Agreement. Purchaser or its contractors shall provide written notice of the Settlement Agreement to all subcontractors hired to perform any portion of the Work required by this Settlement Agreement. Purchaser shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Settlement Agreement.

### IV. DEFINITIONS

11. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA and RCRA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

"BFPP" shall mean a bona fide prospective purchaser as described in Section 101(40) of CERCLA, 42 U.S.C. § 9601(40).

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 - 9675.

"Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

"Effective Date" shall mean the effective date of this Settlement Agreement as provided in Section XXIII.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Existing Contamination” shall mean:

- a. any hazardous substances, pollutants or contaminants present or existing on or under the Site as of the Effective Date;
- b. any hazardous substances, pollutants or contaminants that migrated from the Site prior to the Effective Date; and
- c. any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Site after the Effective Date.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Paragraph” shall mean a portion of this Settlement Agreement identified by an arabic numeral or an upper or lower case letter.

“Parties” shall mean EPA and Purchaser.

“Purchaser” shall mean Sensient Colors LLC, a Delaware limited liability company.

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

“Settlement Agreement” shall mean this Settlement Agreement and Order on Consent for Removal Action by Bona Fide Prospective Purchaser and all appendices attached hereto (listed in Section XXI), and any subsequently approved modification thereto. In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

“Site” shall mean the former Homer A. Doerr & Sons Plating Company, site encompassing approximately 1.7 acres, located at 2408 North Leffingwell Avenue, St. Louis County, St. Louis, Missouri 63106, and depicted generally on the map attached as Appendix B. The Site is located in an industrial area in St. Louis, Missouri. A building used for metal plating operations is located on the western portion of the Site. The eastern half of the Site is undeveloped. The Site shall include all areas to which hazardous substances and/or pollutants or contaminants have been deposited, stored, disposed of, placed, or otherwise come to be located.

“State” shall mean the State of Missouri.

“Supervising Contractor” shall mean the principal contractor retained by Purchaser to supervise and direct the implementation of the Work agreed to in this Settlement Agreement and to sign and approve the Final Report submitted concerning such Work.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Waste Material” shall mean (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27) and (d) “hazardous waste” under Section 1004(5) of RCRA, 42 U.S.C. § 6903(5).

“Work” shall mean all activities Purchaser is required to perform under this Settlement Agreement and the Work Plan.

“Work Plan” shall mean the work plan prepared and submitted by the Purchaser and approved by EPA for performance of all the removal actions at the Site. The Work Plan is attached as Appendix A.

## V. STATEMENT OF FACTS

12. The Purchaser of the Site is Sensient Colors LLC. Sensient Colors LLC manufactures dyes and pigments for use in foods, beverages, cosmetics, and specialty inks. Sensient Colors LLC is located at 2515 North Jefferson Avenue, St. Louis, Missouri.

13. Sensient Colors LLC proposes to purchase the Site after the Effective Date.

14. Sensient Colors LLC proposes to conduct a removal action at the Site by refurbishing the existing building for possible future use and removing contaminated soil around the building. The balance of the Site will be returned to green space.

15. The Site, which is the former Homer A. Doerr & Sons Plating Company property, is located at 2408 North Leffingwell, St. Louis, Missouri. The Homer A. Doerr & Sons Plating Company property is located adjacent to and south of the Sensient Colors LLC property. The Site was used by Homer A. Doerr & Sons Plating Company as an electro and electro-less barrel plating facility.

16. Homer A. Doerr & Sons Plating Company began operating at the Site in 1968, and continued operations for approximately 40 years. Homer A. Doerr & Sons Plating Company notified the Missouri Department of Natural Resources as a small quantity generator of F006 hazardous waste on November 3, 1987.

17. On December 14 and 16, 1993, the Missouri Department of Natural Resources and EPA conducted a RCRA and Missouri Hazardous Water Management Law Compliance Evaluation Inspection of the Homer A. Doerr & Sons Plating Company. After the inspection, a Notice of Violation was issued to Homer A. Doerr & Sons Plating Company for 14 violations of RCRA and the Missouri Hazardous Waste Management Law. At the time of the December 14

and 16, 1993 inspection, Homer A. Doerr & Sons Plating Company was a large quantity generator of F006 hazardous waste.

18. EPA Region 7 conducted a RCRA Compliance Evaluation Inspection of the Site in April of 2001. At the time of this inspection, Homer A. Doerr & Sons Plating Company was a large quantity generator of hazardous waste. A Notice of Violation for 12 RCRA violations was issued to Homer A. Doerr & Sons Plating Company on April 4, 2001.

19. In 2002, Region 7 entered into a Consent Agreement with Homer A. Doerr & Sons Plating Company under Section 3008 of RCRA to address illegal storage of hazardous waste and other RCRA violations at the former electro and electro-less barrel plating facility. Homer A. Doerr & Sons Plating Company did not fully comply with this Order. The company was subsequently administratively dissolved by the State of Missouri in 2014.

20. Sensient Colors LLC completed Phase I and Phase II Environmental Site Assessments of the Site in 2010. Sensient Colors LLC sampled subsurface and surface soils at the Site and found that the metals lead, hexavalent chromium and cadmium exceeded the Risk-Based Target Levels (RBTLs) for residential (unrestricted) and non-residential property use, in the surface soils on Site.

## VI. DETERMINATIONS

21. Based on the Statement of Facts set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

a. The Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Statement of Facts above, includes “hazardous substances” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Purchaser is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. The conditions described in Paragraph 20 of the Statement of Facts above constitute an actual or threatened “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

e. The Work is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

## VII. SETTLEMENT AGREEMENT

22. In consideration of and in exchange for the United States’ Covenant Not to Sue in Section XIV and the Release and Waiver of Liens in Section XVIII, Purchaser agrees to comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to

this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

## VIII. WORK TO BE PERFORMED

23. Purchaser shall perform all actions required by this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this BFPP Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws.

### 24. Work Plan and Implementation.

a. Within 11 months of the Effective Date, Purchaser shall conduct a removal action to remove the soil contaminated with lead, hexavalent chromium and cadmium around the building at the Site, backfill and regrade with clean fill, and perform asbestos abatement in the existing building, in conformance with the Work Plan which is attached as Appendix A. In conjunction with the asbestos abatement work, Purchaser also intends to replace the roof, remove the existing windows and close up the building in preparation for future use.

b. EPA has approved the Work Plan per correspondence dated December 20, 2017. If EPA requires revisions, Purchaser shall submit a revised Work Plan within 14 days of receipt of EPA's notification of the required revisions. Purchaser shall implement the Work Plan as approved or modified in writing by EPA in accordance with the schedule approved by EPA. Once approved, approved with modifications, or modified by EPA, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

c. Purchaser shall not conduct any Work except in conformance with the terms of this Settlement Agreement and the Work Plan attached hereto or as modified pursuant to this Settlement Agreement.

d. In addition to the removal action outlined in the Work Plan, Purchaser commits to adding more substantial landscaping (planting trees, etc.) on the remainder of the property to enhance its green space and make it consistent with landscaping that Purchaser has recently completed in the surrounding community (at or near 2652 Benton Street).

### 25. Submission of Deliverables.

#### a. General Requirements for Deliverables.

(1) Except as otherwise provided in this Settlement Agreement, Purchaser shall direct all submissions required by this Settlement Agreement to: Mike Dandurand, EPA, Region 7, AWMD/WRAP, 11201 Renner Boulevard, Lenexa, Kansas 66219, 913 551-7504, dandurand.michael@epa.gov. Purchaser shall submit all deliverables required by

this Settlement Agreement, or any approved work plan to EPA in accordance with the schedule set forth in such plan.

(2) Purchaser shall submit all deliverables in two hard copies and in electronic form.

26. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to the sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures specified in the Work Plan. Upon request by EPA, Purchaser shall allow EPA or its authorized representatives to take split and/or duplicate samples. Purchaser shall notify EPA not less than 30 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Purchaser to take split or duplicate samples of any samples it takes as part of its oversight of Purchaser's implementation of the Work.

27. Final Report. Within 12 months of the Effective Date, Purchaser shall submit for EPA review and approval in accordance with Section XXII (Notice of Completion) a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall include a statement of actual costs incurred in complying with the Settlement Agreement, a description of the activities conducted to implement the Work Plan, annotated photos depicting the progress of the Work at the Site, a listing of quantities and types of waste materials removed from the Site, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, copies of field notes, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, laboratory data package, contracts, and permits). The final report shall also include the following certification signed by the Supervising Contractor who supervised or directed the preparation of said report:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

28. Off-Site Shipments.

a. Purchaser shall conduct a complete hazardous waste determination pursuant to 40 C.F.R. § 262.11 for all solid wastes, contaminated debris, and contaminated media and soils generated at the Site during the implementation of the Work Plan. All wastes, debris, media and soils that are determined to be hazardous waste, contaminated by hazardous waste or contain hazardous waste will be directed to a permitted hazardous waste treatment, storage and/or disposal facility, in accordance with applicable federal, state and local laws and regulations, including 40 C.F.R. § 300.440. Purchaser shall ensure that all necessary hazardous waste manifests, land disposal restriction notices and associated shipping documentation accompanies each off-site shipment of solid and hazardous waste.

IX. ACCESS/NOTICE TO SUCCESSORS/INSTITUTIONAL CONTROLS

29. Purchaser agrees to provide EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Site and to any other property owned or controlled by Purchaser to which access is required for the implementation of response actions at the Site, until such time as all Work at the Site is complete and EPA has issued a Notice of Completion pursuant to Section XXII (Notice of Completion). EPA agrees to provide reasonable notice to Purchaser of the timing of response actions to be undertaken at the Site and other areas owned or controlled by Purchaser. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and other authorities.

30. Within 14 days of purchasing the Site, Purchaser shall submit to EPA for review and approval an Environmental Covenant to be filed with the St. Louis City Recorder of Deeds, which shall provide notice to all successors-in-title that Purchaser performed a removal action at the Site, and that EPA has released and waived its Section 107(r) lien on the Site in this Settlement Agreement in accordance with Section XVIII (Release and Waiver of Lien). Purchaser shall record the notice within 14 days of EPA's approval of the Environmental Covenant. Purchaser shall provide EPA with a certified copy of the recorded Environmental Covenant within 14 days of recordation.

31. Purchaser shall implement and comply with any activity and use limitations and institutional controls set forth in the Environmental Covenant regardless of its recordation status, and shall not contest EPA's authority to enforce any such land use restrictions and institutional controls on the Site.

32. For so long as Purchaser is an owner or operator of the Site, Purchaser shall require that assignees, successors in interest, and any lessees, sublessees and other parties with rights to use the Site shall provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. Purchaser shall require that assignees, successors in interest, and any lessees, sublessees, and other parties with rights to use the Site implement and comply with any land use restrictions and institutional controls on the Site in connection with a response action, and not contest EPA's authority to enforce any land use restrictions and institutional controls on the Site.

33. Upon sale or other conveyance of the Site or any part thereof, Purchaser shall require that each grantee, transferee or other holder of an interest in the Site or any part thereof shall provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. Purchaser shall require that each grantee, transferee or other holder of an interest in the Site or any part thereof shall implement and comply with any land use restrictions and institutional controls on the Site in connection with a response action and not contest EPA's authority to enforce any land use restrictions and institutional controls on the Site. Purchaser shall record an Environmental Covenant in conformance with Sections 260.1000 to 260.1039, RSMo (the Missouri Environmental Covenants Act), to conform with any land use restrictions or institutional controls. The recording of the Environmental Covenant shall fulfill Purchaser's duty to require subsequent grantees, transferees or other holders of an interest in the Site to implement and comply with such restrictions.

34. Purchaser shall provide a copy of this Settlement Agreement to any current lessee or sublessee.

#### X. RECORD RETENTION, DOCUMENTATION, AND AVAILABILITY OF INFORMATION

35. Purchaser shall preserve all documents and information relating to the Work, or relating to the hazardous substances, pollutants or contaminants found on or released from the Site, and shall submit them to EPA upon completion of the Work required by this Settlement Agreement, or earlier if requested by EPA.

36. Purchaser may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Settlement Agreement, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Analytical and other data specified in Section 104(e)(7)(F) of CERCLA shall not be claimed as privileged or confidential by Purchaser. EPA shall disclose information covered by a business confidentiality claim only to the extent permitted by, and by means of the procedures set forth at, 40 C.F.R. Part 2 Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Purchaser.

#### XI. DISPUTE RESOLUTION

37. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. EPA and Purchaser shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally. If EPA contends that Purchaser is in violation of this Settlement Agreement, EPA shall notify Purchaser in writing, setting forth the basis for its position. Purchaser may dispute EPA's position pursuant to Paragraph 38.

38. If Purchaser disputes EPA's position with respect to Purchaser's compliance with this Settlement Agreement or objects to any EPA action taken pursuant to this Settlement

Agreement, Purchaser shall notify EPA in writing of its position unless the dispute has been resolved informally. EPA may reply, in writing, to Purchaser's position within 14 days of receipt of Purchaser's notice. EPA and Purchaser shall have 14 days from EPA's receipt of Purchaser's written statement of position to resolve the dispute through formal negotiations (the Negotiation Period). The Negotiation Period may be extended at the sole discretion of EPA. Such extension may be granted orally but must be confirmed in writing.

39. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by both Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, the Director of EPA Region 7's Superfund Division will review the dispute on the basis of the parties' written statements of position and issue a written decision on the dispute to Purchaser. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Purchaser's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Purchaser shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

## XII. FORCE MAJEURE

40. Purchaser agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a force majeure. For purposes of this Settlement Agreement, a force majeure is defined as any event arising from causes beyond the control of Purchaser, or of any entity controlled by Purchaser, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Purchaser's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the Work, or increased cost of performance.

41. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a force majeure event, Purchaser shall notify EPA orally within 24 hours of when Purchaser first knew that the event might cause a delay. Within 5 days thereafter, Purchaser shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Purchaser's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Purchaser, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Purchaser from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

42. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the force majeure event will be extended by EPA for such time as is necessary to

complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Purchaser in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify Purchaser in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

43. If Purchaser elects to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution), Purchaser shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Purchaser shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Purchaser complied with the requirements of Paragraphs 41 and 42 above. If Purchaser carries this burden, the delay at issue shall be deemed not to be a violation by Purchaser of the affected obligation of this Settlement Agreement.

### XIII. CERTIFICATION

44. By entering into this Settlement Agreement, Purchaser certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to Purchaser and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Settlement Agreement. Purchaser also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. Purchaser certifies that it currently has no ownership interest in the Site and that it has not caused or contributed to the Existing Contamination, and that it is not affiliated with any entity that is liable or potentially liable for the Existing Contamination. If the United States determines that information provided by Purchaser is not materially accurate and complete, the Settlement Agreement, within the sole discretion of EPA, shall be null and void and EPA reserves all rights it may have.

### XIV. COVENANT NOT TO SUE BY UNITED STATES

45. In consideration of the Work that will be performed by Purchaser under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, the United States covenants not to sue or to take administrative action against Purchaser pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), or for Section 3008 of RCRA, 42 U.S.C. § 6928, for Existing Contamination. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Purchaser of all obligations under this Settlement Agreement. This covenant not to sue extends only to Purchaser and does not extend to any other person.

## XV. RESERVATION OF RIGHTS BY UNITED STATES

46. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA or the United States from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, and from taking other legal or equitable action as it deems appropriate and necessary.

47. The covenant not to sue set forth in Section XIV above does not pertain to any matters other than those expressly identified therein. The United States reserves, and this Settlement Agreement is without prejudice to, all rights against Purchaser with respect to all other matters, including, but not limited to:

- a. liability for failure by Purchaser to meet a requirement of this Settlement Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability for violations of federal, state, or local law or regulations during or after implementation of the Work other than as provided in the Work Plan, the Work, or otherwise ordered by EPA;
- e. liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Site after the Effective Date, not within the definition of Existing Contamination;
- f. liability resulting from exacerbation of Existing Contamination by Purchaser, its successors, assigns, lessees, or sublessees; and
- g. liability arising from the disposal, release or threat of release of Waste Materials outside of the Site.

48. With respect to any claim or cause of action asserted by the United States, Purchaser shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination and that Purchaser has complied with all of the requirements of 42 U.S.C. § 9601(40).

49. Work Takeover. In the event EPA determines that Purchaser has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Prior to taking over the Work, EPA will issue written notice to Purchaser specifying the grounds upon which such notice was issued and

providing Purchaser with 14 days within which to remedy the circumstances giving rise to EPA's issuance of the notice. Purchaser may invoke the procedures set forth in Section XI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

#### XVI. COVENANT NOT TO SUE BY PURCHASER

50. Purchaser covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Existing Contamination, the Work, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions, including any claim under the United States Constitution, the Missouri Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law.

51. Purchaser reserves, and this Settlement Agreement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Purchaser's plans, reports, other deliverables, or activities.

52. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

#### XVII. EFFECT OF SETTLEMENT/CONTRIBUTION

53. Nothing in this Settlement Agreement precludes the United States or Purchaser from asserting any claims, defenses, causes of action, or demands for indemnification, contribution, or cost recovery against any person not a party to this Settlement Agreement, including any claim Purchaser may have pursuant to Section 107(a)(4)(B). Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or

response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

54. If a suit or claim for contribution is brought against Purchaser, notwithstanding the provisions of Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to Existing Contamination (including any claim based on the contention that Purchaser is not a BFPP, or has lost its status as a BFPP as a result of response actions taken in compliance with this Settlement Agreement), the Parties agree that this Settlement Agreement shall then constitute an administrative settlement pursuant to which Purchaser has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or by any other person with respect to Existing Contamination.

55. If Purchaser is found, in connection with any action or claim it may assert to recover costs incurred or to be incurred with respect to Existing Contamination, not to be a BFPP, or to have lost its status as a BFPP as a result of response actions taken in compliance with this Settlement Agreement, the Parties agree that this Settlement Agreement shall then constitute an administrative settlement pursuant to which Purchaser has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

56. Purchaser agrees that with respect to any suit or claim brought by it for matters related to this Settlement Agreement it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

57. Purchaser also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement it will notify the United States in writing within 10 days of service of the complaint on it. In addition, Purchaser agrees that it will notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

#### XVIII. RELEASE AND WAIVER OF LIEN

58. Subject to the Reservation of Rights in Section XV of this Settlement Agreement, upon satisfactory completion of the Work specified in Section VIII (Work to be Performed), EPA agrees to release and waive any lien it may have on the Site now and in the future under Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), for costs incurred or to be incurred by EPA in responding to the release or threat of release of Existing Contamination.

#### XIX. INDEMNIFICATION

59. Purchaser shall indemnify, save, and hold harmless the United States, its officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or

causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Purchaser, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Purchaser agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys' fees and other expenses of litigation, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Purchaser, Purchaser's officers, directors, employees, agents, contractors, subcontractors, and any persons acting on Purchaser's behalf or under Purchaser's control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Purchaser in carrying out activities pursuant to this Settlement Agreement. Neither Purchaser nor any such contractor shall be considered an agent of the United States.

60. The United States shall give Purchaser notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Purchaser prior to settling such claim.

61. Purchaser waives all claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Purchaser and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Purchaser shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Purchaser and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

## XX. MODIFICATION

62. Any requirements of this Settlement Agreement may be modified in writing by mutual agreement of the Parties.

63. If Purchaser seeks permission to deviate from any approved work plan or schedule, Purchaser shall submit a written request to EPA for approval outlining the proposed modification and its basis. Purchaser may not proceed with the requested deviation until receiving oral or written approval from EPA.

64. No informal advice, guidance, suggestion, or comment by EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Purchaser shall relieve Purchaser of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified in writing.

## XXI. APPENDICES

65. The following appendices are attached to and incorporated into this Settlement Agreement.

a. Appendix A shall mean the Work Plan.

- b. Appendix B shall mean a map of the Site.

## XXII. NOTICE OF COMPLETION

66. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including continued compliance with CERCLA Section 101(40) with respect to the Site in accordance with Paragraph 5 of this Settlement Agreement, record retention, and compliance with institutional controls, EPA will provide written notice of completion to Purchaser. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Purchaser, provide a list of the deficiencies, and require that Purchaser modify the Work Plan if appropriate in order to correct such deficiencies. Purchaser shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Purchaser to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

## XXIII. EFFECTIVE DATE

67. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice to Purchaser that EPA has fully executed the Settlement Agreement after review of and response to any public comments received.

## XXIV. DISCLAIMER

68. This Settlement Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Site nor constitutes any representation by EPA that the Site is fit for any particular purpose.

## XXV. PAYMENT OF COSTS

69. If Purchaser fails to comply with the terms of this Settlement Agreement, it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Settlement Agreement or otherwise obtain compliance.

## XXVI. NOTICES AND SUBMISSIONS

70. Any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Settlement Agreement, shall be deemed submitted either when hand-delivered or as of the date of receipt by certified mail/return receipt requested, express mail, or facsimile.

Submissions to Purchaser shall be addressed to:

Gregg Rainbolt, Director of Operations, Sensient Colors LLC, 2515 North Jefferson Avenue, St. Louis, MO 63106-1939, telephone: (314) 286-3511; email: [gregg.rainbolt@sensient.com](mailto:gregg.rainbolt@sensient.com).

With copies to:

Kent Schmidt, Senior EHS manager, Sensient Colors LLC, 2515 North Jefferson Avenue, St. Louis, Missouri 63106-1939, telephone: (314) 286-7148; email: kent.schmidt@sensient.com.

Submissions to U.S. EPA shall be addressed to:

Mike Dandurand, EPA, Region 7, AWMD-WEMM, 11201 Renner Boulevard, Lenexa, Kansas 66219, telephone: (913) 551-7504, email: dandurand.michael@epa.gov.

XXVII. PUBLIC COMMENT

71. This Settlement Agreement shall be subject to a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

The undersigned representative of Purchaser certifies that it is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party it represents to this document.

IT IS SO AGREED:

**FOR SENSIENT COLORS LLC**

2/20/2018  
Date

Signature: Michael C. Geraghty

Print Name: Michael C. Geraghty

Title: President

**FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

3-8-18  
Date

  
Mary R. Peterson  
Director  
Superfund Division

3/7/18  
Date

  
Becky Weber  
Director  
Air and Waste Management Division

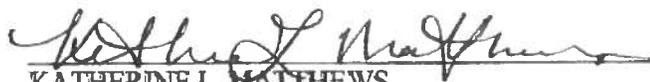
3/2/18  
Date

  
Alex Chen  
Senior Counsel  
Office of Regional Counsel

**FOR THE UNITED STATES DEPARTMENT OF JUSTICE**

**JEFFREY H. WOOD**  
Acting Assistant Attorney General  
Environment & Natural Resources Division

3/22/18  
Date

  
KATHERINE L. MATTHEWS  
Senior Counsel  
Environmental Enforcement Section  
Environment & Natural Resources Division